
**APPEALS BOARD
UTAH LABOR COMMISSION**

BLANCA G. BRIGADA,

Petitioner,

vs.

**WENDY'S and ACE AMERICAN
INSURANCE COMPANY,**

Respondent.

**ORDER DENYING REQUEST
FOR RECONSIDERATION**

Case No. 04-0653

Blanca G. Brigada requests reconsideration of the Appeals Board's prior decision in this matter, which decision affirmed Judge Marlowe's denial of Ms. Brigada's claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this matter pursuant to Utah Code Ann. §63-46b-13.¹

BACKGROUND AND ISSUES PRESENTED

The Appeals Board's prior decision ratified Judge Marlowe's conclusion that Ms. Brigada failed to provide notice of her claim within the 180-day period established by § 34A-3-108(2) of the Act. In requesting reconsideration, Ms. Brigada again argues that she satisfied the statute's notice requirement.

DISCUSSION

Judge Marlowe and the Appeals Board each concluded that Ms. Brigada did not provide timely notice of her alleged occupational disease within 180 days after the date her cause of action arose. In reaching this determination, Judge Marlowe and the Appeals Board primarily relied on Ms. Brigada's testimony at the evidentiary hearing on her claim.

In requesting reconsideration, Ms. Brigada attempts to explain away her previous testimony

¹ In her original motion for review, Ms. Brigada selected the Appeals Board to review Judge Marlowe's decision. Later, Ms. Brigada attempted to withdraw her selection so that the motion for review would be considered by the Labor Commissioner, rather than the Appeals Board. However, as noted in the Appeals Board's prior decision, § 34A-1-303(3) of the Labor Commission Act requires that a party seeking review of an ALJ's decision to choose review by either the Appeals Board or the Commissioner as part of the motion for review. Nothing in § 34A-2-303(3) authorizes a party to reverse that choice after it is made. The Appeals Board therefore reaffirms its previous determination that it has jurisdiction over this review proceeding.

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as the result of confusion, language difficulties, or inaccurate translation. The Appeals Board recognizes the obstacles that non-English speaking individuals face in presenting their testimony in proceedings such as this. However, in the hearing on Ms. Brigada's claim, she had the services of a competent interpreter and was represented by counsel throughout the proceeding. It appears that Ms. Brigada had a fair opportunity to explain the facts of her case. Under these circumstances, the Appeals Board sees no reason why it should not rely on Ms. Brigada's testimony. That testimony establishes Ms. Brigada's claim for occupational disease benefits arose by March 5, 2003.

Ms. Brigada also argues that, by mentioning her arm problems to a granddaughter who was also an assistant manager at Wendy's, Ms. Brigada provided notice of her occupational disease claim to Wendy's. The Appeals Board has considered the evidence on this point but does not view Ms. Brigada's comments to her granddaughter as sufficient to constitute notice under § 34A-3-108(2). To the contrary, the record indicates that Ms. Brigada did not intend for her granddaughter to inform Wendy's of her medical problems at that time. Three other Spanish speaking managers also testified that Ms. Brigada never stated that her shoulder problems were work-related.

In summary, the Appeals Board ratifies its previous determination that Ms. Brigada failed to provide the notice required by § 34A-3-108(2).

ORDER

The Appeals Board reaffirms its previous decision in this matter. It is so ordered.

Dated this 3rd day of December, 2007.

Colleen Colton, Chair

Patricia S. Drawe

Joseph E. Hatch